IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Short Cause Suit No. 1247 of 1987

1. Smt.Subhadra S.Misra and ors. ..Plantiffs

vs.

Smt.Suraiya Khan ..Defendant

Mr.Naushrat Shah i/b Mr.R.S.Mishra for plaintiffs.

**CORAM: S.C.DHARMADHIKARI J.**
**6th July, 2007**

**P.C.**

1. The sole defendant has been served long time back but has failed to file any written statement. In fact, the sole defendant has engaged an Advocate who has not bothered to move the Court for seeking any extension of time either. Thus, the directions issued by this Court have not been complied with. There is no written statement on record.

2. In these circumstances, Mr.Shah, learned Counsel appearing for the plaintiffs, seeks a decree in terms of the prayers in the plaint.

3. This is a suit for a declaration that the defendant has no right, title or interest to conduct the business which belongs to the plaintiffs from the premises, more

particularly, described at Exhibit A to the plaint and mandatory order and direction be passed directing the defendants to hand over to the plaintiffs the business of the plaintiffs, more particularly, described in prayer clauses (a) and (b), a decree of permanent injunction and for payment of money is also claimed in the suit and on the basis that the said monetary claim a further royalty in the business in also claimed.

4. Mr.Shah, learned Counsel appearing for the plaintiffs states taht the original documents and the affidavit has been filed in this Court. A compilation of documents relied upon by the plaintiffs is taken on record and marked "X" colly. for identification. The plaintiffs have filed their affidavit in lieu of the examination in chief.

5. They had deposed before the Court that the plaintiff no.1 is the mother of plaintiff nos. 2 and 3. She knows the defendant. The defendant was conducting the business of restaurant from the premises referred to above.

6. The plaintiffs have clearly deposed with regard to their ownership of the premises which have been purchased as back as in 1968 jointly by plaintiff no.1 along with her deceased sister. The documents that are referred to include the original agreement dated 23rd April, 1968 with

the vendor and plaintiff no.1 and her deceased sister as purchasers. Shop no.2 was purchased in the name of plaintiff no.1 and in thename of her step son and plaintiff no.2. The agreement pertaining to that is also tendered in original.

7. Thereafter the share certificate of the Cooperative Housing Society which is formed by the flat purchasers is also produced on record. The maintenance bills are also produced. The plaintiffs have deposed that the step son Laxmi Narayan had retired from the business after releasing all his right in favour of the plaintiffs with regard to the shop premises. There is a retirement deed which is also brought on record.

8. In the year 1982, the defendant approached the plaintiffs and that is how the suit transaction was entered into. The original agreement of conducting is with the defendant whereas the photo copy thereof is produced on record. The defendant does not dispute the ownership of the premises nor has she disputed her liability to pay the monthly sum towards royalty with regard to the suit premises. The restaurant business was conducted on the basis of the licence which show that the plaintiffs are the owners of the premises and only arrangement between the parties was that the defendant was permitted to conduct the business therefrom. the

agreement itself stipulates that no right, title or interest in the premises is created in favour of the defendant. This is a pure and simple conducting agreement according to the plaintiffs which upon its termination in May 1983 entitles them to seek possession.

9. The affidavits are also taken on record and marked "Y" colly. for identification.

10. There is neither any written statement on record nor is the defendant present despite engaging the advocate to cross examine the plaintiffs. In the light of the law laid down by this Court in All India Central Bank Employees Congress and others Vs. Central Bank of India, reported in 2007(3) Mh.L.J.534 all facts necessary to make the plaintiffs eligible for decree have been pleaded. The claim is within the jurisdiction of this Court and not barred by law of limitation as well. The defendant having not put in any defence and failed to cross examine the plaintiffs on their case despite all opportunities in that behalf gives enough discretion to this Court to pronounce the judgment in favour of the plaintiffs and against the defendant in terms of Order 8 Rule 5(2) read with Rule 10 of Code of Civil Procedure, 1908.

11. Accordingly, there shall be a decree in terms of prayers (a) to (d). The Advocate’s cost is to be computed

as per rules.

12. It is pointed out by Mr.Shah that duringthe course of the suit upon applciation in that behalf the Court Receiver, High Court, Bombay has been appointed as Receiver of the subject shop premises/business and with the authority to appoint the party to the suit as his agent. The plaintiffs have been duly appointed as the agents by him and put in possession in pursuance of the agency agreement. The plaintiffs are thus continuing in possession as agents of the Court Receiver. However, the suit having been decreed today, appropriate directions be issued to the Court Receiver.

13. I find the request to be reasonable and deserves to be accepted. Accordingly after the decree is pronounced it is directed that the Court Receiver shall stand discharged without passing the accounts but on payment of usual costs and expenses. Needless to state that the Receiver shall pay to the plaintiffs the royalty amount which has been collected by him till date along with the accrued interest.

14. All concerned to act on an authenticated copy of this order.

15. Certified copy of the decree is expedited.

**(S.C.DHARMADHIKARI J.)**